Due diligence promotes accurate EITC claims. Incorrect tax returns and failure to comply with the due diligence requirements can adversely affect you and your client:

- The IRS can examine your client's return, and if it is found incorrect, can assess your client accuracy or fraud penalties. IRS can also ban your client from claiming EITC for 2 or 10 years.
- If you fail to comply with EITC due diligence requirements, the IRS can assess a $100 penalty against you for each failure (IRC § 6695(g)).
- If you prepare a client's return and any part of an understatement of tax liability is due to an unreasonable position, the IRS can assess a minimum penalty of $1,000 (IRC § 6694(a)) against you. If the understatement is due to reckless or intentional disregard of rules or regulations, the minimum penalty is $5,000 (IRC § 6694(b)).
- You can be subject to disciplinary action by the IRS Office of Professional Responsibility.
- You and your firm can face suspension or expulsion from participation in IRS e-file.
- You can be barred from preparing tax returns.

Pay particular attention to the following three issues that account for more than 60 percent of all EITC errors:

1. Claiming a child who does not meet the age, relationship or residency requirement.
2. Filing as single or head of household when married.
3. Incorrectly reporting income.

Take these simple steps to avoid EITC errors:

- Know the EITC tax law and eligibility rules. Remember, software is not a substitute for knowledge of EITC tax law.
- Practice EITC due diligence.

For more information about EITC and EITC Due Diligence, see:

www.eitc.irs.gov, your home for all things EITC

www.irs.gov/eitc and select EITC for Tax Professionals link

Publication 596, *Earned Income Credit*

IRC § 6695(g)

Treasury Regulations §1.6695-2

Publication 4687 (Rev. 05-2009) Catalog Number 51636Y
Department of the Treasury **Internal Revenue Service** www.irs.gov

EITC

Due Diligence is more than a check mark on a form or clicking through tax preparation software…

- **Know the requirements**
- **Avoid possible penalties**
- **Get the facts**

Life's a little easier with eitc earned income tax credit

AS a paid preparer who prepares tax returns claiming the Earned Income Tax Credit (EITC), you must meet four due diligence requirements. These requirements focus on accurately determining a taxpayer's eligibility for EITC and computing the credit.

The first three requirements have to do with completing forms and keeping records. The fourth, and most challenging, requires you to:

- Know the EITC tax laws thoroughly
- Evaluate your client's information
- Ask the right questions
- Document the questions you ask and your client's answers

To meet the due diligence requirements, you must:

1. Complete Form 8867, Paid Preparer's Earned Income Credit Checklist, or a document with the same information.
    - Parts I-III of Form 8867 include questions covering basic EITC requirements
    - The subsections are divided for:
      All taxpayers
      Taxpayers with a qualifying child
      Taxpayers without a qualifying child
    - You must ask and explain each of the questions in Part I to every EITC client and all of the questions in Parts II or III that apply
    - You must also personally answer the due diligence questions in Part IV
2. Complete the EITC worksheet in the Form 1040 series instructions or the Publication 596, Earned Income Credit. Or, complete a document with the same information.
    - The EITC worksheet shows how the credit was computed and the amount of self-employment income, total earned income, investment income and adjusted gross income included in the computation
    - Most tax preparation software includes an EITC worksheet
3. Keep Form 8867, the EITC worksheet (or documents with the same information), and a record of how, when and from whom you got the information used to prepare the return. Keep these documents for three years from June 30 following the date you presented the return or claim for refund to your client to sign.
    - The **when** is documented by the tax return
    - The **who** and **how** are generally documented by either the interview software or a paper intake sheet completed by the client
    - You can keep these records in either paper or electronic format
4. Not know or have reason to know that any information used to determine if the taxpayer is eligible or to compute the amount of the credit is not correct.
    - You must ask your client additional questions if a reasonable and well-informed tax return preparer, knowledgeable in the law, would conclude the information furnished seems incorrect, inconsistent or incomplete.
    - At the time of the interview, you must document in your files the questions you asked and your client's responses.

IRS assesses most due diligence penalties for failure to comply with the knowledge requirement. To meet the knowledge requirement, you should:

- Apply a common sense standard to the information provided by your client
- Evaluate whether the information is complete and gather any missing facts
- Determine if the information is consistent; recognize contradictory statements and statements you know not to be true
- Conduct a thorough, in-depth interview with every client, every year
- Ask enough questions to reasonably know the return is correct and complete
- Document in the file any questions you asked and your client's responses, as it happens

Following are examples of situations when you should ask additional questions to meet your due diligence knowledge requirement:

- A client wants to use his niece and nephew to claim the EITC.

  You should ask enough questions to determine whether the children meet EITC qualifying child requirements for your client. You should also ask enough questions to ensure the children's parents or other relatives will not, or cannot, claim the children.

- An 18 year-old client with an infant has $3,000 in earned income and states she lives with her parents. She wants to claim the infant as a qualifying child for the EITC.

  This information seems incomplete and inconsistent because the 18 year old lives with her parents and earns very little income. You must ask additional questions to determine if the 18 year old is the qualifying child of her parents. If she is the qualifying child of her parents, she is not eligible to claim the EITC.

- A 22 year-old client wants to claim two sons, ages 10 and 11, as qualifying children for EITC.

  You must make additional reasonable inquiries regarding the relationship between your client and the children since the age of the client seems inconsistent with the ages of the children claimed as sons.

- A client has two qualifying children and wants to claim the EITC. She tells you she had a Schedule C business and earned $10,000 in income and had no expenses.

  This information appears incomplete because it is unusual that someone who is self-employed has no business expenses. You must ask additional reasonable questions to determine if the business exists and if the information about her income and expenses is correct.

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